



Substitute House Bill No. 5606

Public Act No. 16-145

***AN ACT CONCERNING THE CONNECTICUT REVISED UNIFORM
FIDUCIARY ACCESS TO DIGITAL ASSETS ACT.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective October 1, 2016*) Sections 1 to 18, inclusive, of this act may be cited as the "Connecticut Revised Uniform Fiduciary Access to Digital Assets Act".

Sec. 2. (NEW) (*Effective October 1, 2016*) As used in sections 1 to 18, inclusive, of this act:

(1) "Account" means an arrangement under a terms-of-service agreement in which a custodian carries, maintains, processes, receives or stores a digital asset of the user or provides goods or services to the user;

(2) "Agent" means an attorney-in-fact granted authority under a durable or nondurable power of attorney;

(3) "Carries" means engages in the transmission of an electronic communication;

(4) "Catalogue of electronic communications" means information that identifies each person with which a user has had an electronic

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communication, the time and date of the communication, and the electronic address of the person;

(5) "Conservator" means a person appointed by a court to manage the estate of a living individual. "Conservator" includes a limited conservator;

(6) "Content of an electronic communication" or "content of electronic communications" means information concerning the substance or meaning of the communication which:

(A) Has been sent or received by a user;

(B) Is stored in electronic form by a custodian providing an electronic-communication service to the public or is carried or maintained by a remote-computing service to the public; and

(C) Is not readily accessible to the public;

(7) "Court" means a court of competent jurisdiction, including, but not limited to, the Probate Court or the Superior Court. A judge of the Probate Court or the Superior Court shall be deemed a judge of competent jurisdiction for the purposes of 18 USC 2510(9), as amended from time to time, with respect to an order issued under any provision of sections 1 to 18, inclusive, of this act;

(8) "Custodian" means a person that carries, maintains, processes, receives or stores a digital asset of a user;

(9) "Designated recipient" means a person chosen by a user using an online tool to administer digital assets of the user;

(10) "Digital asset" means an electronic record in which an individual has a right or interest. "Digital asset" does not include an underlying asset or liability unless the asset or liability is itself an electronic record;

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(11) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities;

(12) "Electronic communication" has the meaning set forth in 18 USC 2510(12), as amended from time to time;

(13) "Electronic-communication service" means a custodian that provides to a user the ability to send or receive an electronic communication;

(14) "Fiduciary" means an original, additional or successor executor, conservator, agent or trustee;

(15) "Information" means data, text, images, videos, sounds, codes, computer programs, software, databases or the like;

(16) "Online tool" means an electronic service provided by a custodian that allows the user, in an agreement distinct from the terms-of-service agreement between the custodian and the user, to provide directions for disclosure or nondisclosure of digital assets to a third person;

(17) "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency or instrumentality or other legal entity;

(18) "Executor" means an executor, administrator, special administrator, temporary administrator of an estate or any person that performs substantially the same functions as such executor, administrator, special administrator or temporary administrator under the laws of this state, other than sections 1 to 18, inclusive, of this act;

(19) "Power of attorney" means a record that grants an agent authority to act in the place of a principal;

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(20) "Principal" means an individual who grants authority to an agent in a power of attorney;

(21) "Conserved person" means an individual for whom a conservator has been appointed. "Conserved person" includes a respondent, as defined in section 45a-644 of the general statutes, for whom an application for the appointment of a conservator is pending;

(22) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(23) "Remote-computing service" means a custodian that provides to a user computer-processing services or the storage of digital assets by means of an electronic communications system, as defined in 18 USC 2510(14), as amended from time to time;

(24) "Terms-of-service agreement" means an agreement that controls the relationship between a custodian and a user;

(25) "Trustee" means a fiduciary with legal title to property under an agreement or declaration that creates a beneficial interest in another. "Trustee" includes a successor trustee;

(26) "User" means a person that has an account with a custodian; and

(27) "Will" includes a codicil, testamentary instrument that only appoints an executor and instrument that revokes or revises a testamentary instrument.

Sec. 3. (NEW) (*Effective October 1, 2016*) (a) Sections 1 to 18, inclusive, of this act apply to:

(1) A fiduciary acting under a will or power of attorney executed before, on or after October 1, 2016;

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(2) An executor acting for a decedent who died before, on or after October 1, 2016;

(3) A conservatorship proceeding commenced before, on or after October 1, 2016; and

(4) A trustee acting under a trust created before, on or after October 1, 2016.

(b) Sections 1 to 18, inclusive, of this act apply to a custodian if the user resides in this state or resided in this state at the time of the user's death.

(c) Sections 1 to 18, inclusive, of this act do not apply to a digital asset of an employer used by an employee in the ordinary course of the employer's business.

Sec. 4. (NEW) (*Effective October 1, 2016*) (a) A user may use an online tool to direct the custodian to disclose to a designated recipient, or not to disclose to a designated recipient, some or all of the user's digital assets, including the content of electronic communications. If the online tool allows the user to modify or delete a direction at all times, a direction regarding disclosure using an online tool overrides a contrary direction by the user in a will, trust, power of attorney or other record.

(b) If a user has not used an online tool to give direction under subsection (a) of this section or if the custodian has not provided an online tool to give such direction, the user may allow or prohibit in a will, trust, power of attorney or other record disclosure to a fiduciary of some or all of the user's digital assets, including the content of electronic communications sent or received by the user.

(c) A user's direction under subsection (a) or (b) of this section overrides a contrary provision in a terms-of-service agreement that

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does not require the user to act affirmatively and distinctly from the user's assent to the terms-of-service agreement.

Sec. 5. (NEW) (*Effective October 1, 2016*) (a) Sections 1 to 18, inclusive, of this act do not change or impair a right of a custodian or a user under a terms-of-service agreement to access and use digital assets of the user.

(b) Sections 1 to 18, inclusive, of this act do not give a fiduciary or a designated recipient any new or expanded rights other than those held by the user for whom, or for whose estate, the fiduciary or designated recipient acts or represents.

(c) A fiduciary's or designated recipient's access to digital assets may be modified or eliminated by a user, by federal law or by a terms-of-service agreement if the user has not provided direction under section 4 of this act.

Sec. 6. (NEW) (*Effective October 1, 2016*) (a) When disclosing digital assets of a user under sections 1 to 18, inclusive, of this act, the custodian may, at its sole discretion:

(1) Grant a fiduciary or designated recipient full access to the user's account;

(2) Grant a fiduciary or designated recipient partial access to the user's account sufficient to perform the tasks with which the fiduciary or designated recipient is charged; or

(3) Provide a fiduciary or designated recipient a copy in a record of any digital asset that, on the date the custodian received the request for disclosure, the user could have accessed if the user were alive and had full capacity and access to the account.

(b) A custodian may assess a reasonable administrative charge for

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the cost of disclosing digital assets under sections 1 to 18, inclusive, of this act.

(c) A custodian need not disclose under any provision of sections 1 to 18, inclusive, of this act a digital asset deleted by a user.

(d) If a user directs or a fiduciary requests a custodian to disclose under any provision of sections 1 to 18, inclusive, of this act some, but not all, of the user's digital assets, the custodian need not disclose the assets if segregation of the assets would impose an undue burden on the custodian. If the custodian believes the direction or request imposes an undue burden on the custodian, the custodian or fiduciary may seek an order from the court to disclose:

(1) A subset limited by date of the user's digital assets;

(2) All of the user's digital assets to the fiduciary or designated recipient;

(3) None of the user's digital assets; or

(4) All of the user's digital assets to the court for review in camera for the purpose of permitting the court to issue an order pursuant to sections 1 to 18, inclusive, of this act.

Sec. 7. (NEW) (*Effective October 1, 2016*) If a deceased user consented to, or a court directs disclosure of, the contents of electronic communications of the user, the custodian shall disclose to the executor of the estate of the user the content of an electronic communication sent or received by the user if the executor gives the custodian:

(1) A written request for disclosure in physical or electronic form;

(2) A certified copy of the death certificate of the user;

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(3) A certified copy of the certificate of appointment as executor;

(4) Unless the user provided direction using an online tool, a copy of the user's will, trust, power of attorney or other record evidencing the user's consent to disclosure of the content of electronic communications; and

(5) If requested by the custodian:

(A) A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(B) Evidence linking the account to the user; or

(C) A court record or order that includes a finding by the court that:

(i) The user had a specific account with the custodian that is identifiable by the information specified in subparagraph (A) of this subdivision;

(ii) Disclosure of the content of electronic communications of the user would not violate 18 USC 2701 et seq., 47 USC 222, or other applicable law, as amended from time to time;

(iii) Unless the user provided direction using an online tool, the user consented to disclosure of the content of electronic communications; or

(iv) Disclosure of the content of electronic communications of the user is reasonably necessary for administration of the estate.

Sec. 8. (NEW) (*Effective October 1, 2016*) Unless the user prohibited disclosure of digital assets or the court directs otherwise, a custodian shall disclose to the executor of the estate of a deceased user a catalogue of electronic communications sent or received by the user and digital assets, other than the content of electronic communications,

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of the user, if the executor gives the custodian:

- (1) A written request for disclosure in physical or electronic form;
 - (2) A certified copy of the death certificate of the user;
 - (3) A certified copy of the certificate of appointment as executor;
- and

(4) If requested by the custodian:

(A) A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(B) Evidence linking the account to the user;

(C) An affidavit stating that disclosure of the user's digital assets is reasonably necessary for administration of the estate; or

(D) A finding by the court that:

(i) The user had a specific account with the custodian that is identifiable by the information specified in subparagraph (A) of this subdivision; or

(ii) Disclosure of the user's digital assets is reasonably necessary for administration of the estate.

Sec. 9. (NEW) (*Effective October 1, 2016*) To the extent a power of attorney expressly grants an agent authority over the content of electronic communications sent or received by the principal and unless directed otherwise by the principal or the court, a custodian shall disclose to the agent the content of electronic communications if the agent gives the custodian:

- (1) A written request for disclosure in physical or electronic form;

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(2) An original or copy of the power of attorney expressly granting the agent authority over the content of electronic communications of the principal;

(3) A certification by the agent, under penalty of perjury, that the power of attorney is in effect; and

(4) If requested by the custodian:

(A) A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or

(B) Evidence linking the account to the principal.

Sec. 10. (NEW) (*Effective October 1, 2016*) Unless otherwise ordered by the court, directed by the principal or provided by a power of attorney, a custodian shall disclose to an agent with specific authority over digital assets or general authority to act on behalf of a principal a catalogue of electronic communications sent or received by the principal and digital assets, other than the content of electronic communications, of the principal if the agent gives the custodian:

(1) A written request for disclosure in physical or electronic form;

(2) An original or a copy of the power of attorney that gives the agent specific authority over digital assets or general authority to act on behalf of the principal;

(3) A certification by the agent, under penalty of perjury, that the power of attorney is in effect; and

(4) If requested by the custodian:

(A) A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the principal's

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account; or

(B) Evidence linking the account to the principal.

Sec. 11. (NEW) (*Effective October 1, 2016*) Unless otherwise ordered by the court or provided in a trust, a custodian shall disclose to a trustee who is an original user of an account any digital asset of the account held in trust, including a catalogue of electronic communications of the trustee and the content of electronic communications.

Sec. 12. (NEW) (*Effective October 1, 2016*) Unless otherwise ordered by a court, directed by the user or provided in a trust, a custodian shall disclose to a trustee who is not an original user of an account the content of an electronic communication sent or received by an original or successor user and carried, maintained, processed, received or stored by the custodian in the account of the trust if the trustee gives the custodian:

(1) A written request for disclosure in physical or electronic form;

(2) A certified copy of the trust instrument that includes consent to disclosure of the content of electronic communications to the trustee;

(3) A certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and

(4) If requested by the custodian:

(A) A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the account of the trust; or

(B) Evidence linking the account to the trust.

Sec. 13. (NEW) (*Effective October 1, 2016*) Unless otherwise ordered

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by the court, directed by the user or provided in a trust, a custodian shall disclose, to a trustee who is not an original user of an account, a catalogue of electronic communications sent or received by an original or successor user and carried, maintained, processed, received or stored by the custodian in an account of the trust and any digital assets, other than the content of electronic communications, in which the trust has a right or interest if the trustee gives the custodian:

- (1) A written request for disclosure in physical or electronic form;
- (2) A certified copy of the trust instrument;
- (3) A certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and
- (4) If requested by the custodian:
 - (A) A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or
 - (B) Evidence linking the account to the trust.

Sec. 14. (NEW) (*Effective October 1, 2016*) (a) After an opportunity for a hearing in the manner prescribed in sections 45a-645a to 45a-645c, inclusive, of the general statutes, a court may grant a conservator access to the digital assets of a conserved person.

(b) Unless otherwise ordered by the court or directed by the user, a custodian shall disclose to a conservator the catalogue of electronic communications sent or received by a conserved person and any digital assets, other than the content of electronic communications, in which the conserved person has a right or interest if the conservator gives the custodian:

- (1) A written request for disclosure in physical or electronic form;

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(2) A certified copy of the court order that gives the conservator authority over the digital assets of the conserved person; and

(3) If requested by the custodian:

(A) A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the account of the conserved person; or

(B) Evidence linking the account to the conserved person.

(c) A conservator with general authority to manage the assets of a conserved person may request a custodian of the digital assets of the conserved person to suspend or terminate an account of the conserved person for good cause. A request made under this subsection must be accompanied by a certified copy of the certificate of appointment giving the conservator authority over the conserved person's property.

Sec. 15. (NEW) (*Effective October 1, 2016*) (a) The legal duties imposed on a fiduciary charged with managing tangible property apply to the management of digital assets, including:

(1) The duty of care;

(2) The duty of loyalty; and

(3) The duty of confidentiality.

(b) A fiduciary's or designated recipient's authority with respect to a digital asset of a user:

(1) Except as otherwise provided in section 4 of this act, is subject to the applicable terms-of-service agreement;

(2) Is subject to other applicable law, including copyright law;

(3) In the case of a fiduciary, is limited by the scope of the fiduciary's

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duties; and

(4) May not be used to impersonate the user.

(c) A fiduciary with authority over the property of a decedent, conserved person, principal or settlor has the right to access any digital asset in which the decedent, conserved person, principal or settlor had a right or interest and that is not held by a custodian or subject to a terms-of-service agreement.

(d) A fiduciary acting within the scope of the fiduciary's duties is an authorized user of the property of the decedent, conserved person, principal or settlor for the purpose of applicable computer-fraud and unauthorized-computer-access laws, including, but not limited to, section 53a-251 of the general statutes.

(e) A fiduciary with authority over the tangible, personal property of a decedent, conserved person, principal or settlor:

(1) Has the right to access the property and any digital asset stored in it; and

(2) Is an authorized user for the purpose of computer-fraud and unauthorized-computer-access laws, including, but not limited to, section 53a-251 of the general statutes.

(f) A custodian may disclose information in an account to a fiduciary of the user when the information is required to terminate an account used to access digital assets licensed to the user.

(g) A fiduciary of a user may request a custodian to terminate the user's account. A request for termination must be in writing, in either physical or electronic form, and accompanied by:

(1) A certified copy of the death certificate of the user if the user is deceased;

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(2) A certified copy of any one or more of the following that gives the fiduciary authority over the account:

- (A) A certificate of appointment as executor;
- (B) A certificate of appointment as conservator;
- (C) A power of attorney; or
- (D) A trust; and

(3) If requested by the custodian:

(A) A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(B) Evidence linking the account to the user; or

(C) A finding by a court that the user had a specific account with the custodian that is identifiable by the information specified in subparagraph (A) of this subdivision.

Sec. 16. (NEW) (*Effective October 1, 2016*) (a) Not later than sixty days after receipt of the information required under sections 7 to 15, inclusive, of this act, a custodian shall comply with a request under any provision of sections 1 to 18, inclusive, of this act from a fiduciary or designated recipient to disclose digital assets or terminate an account. If the custodian fails to comply with such request, the fiduciary or designated recipient may apply to the court for an order directing compliance with the request.

(b) An order under subsection (a) of this section directing compliance with such request must contain a finding that compliance is not in violation of 18 USC 2702, as amended from time to time.

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(c) A custodian may notify the user that a request was made under sections 1 to 18, inclusive, of this act for disclosure or to terminate an account.

(d) A custodian may deny a request under any provision of sections 1 to 18, inclusive, of this act from a fiduciary or designated recipient for disclosure of digital assets or to terminate an account if the custodian is aware of any lawful access to the account following the receipt of the fiduciary's request.

(e) Sections 1 to 18, inclusive, of this act do not limit a custodian's ability to obtain or require a fiduciary or designated recipient requesting disclosure or termination under sections 1 to 18, inclusive, of this act to obtain a court order which:

(1) Specifies that an account belongs to the conserved person or principal;

(2) Specifies that there is sufficient consent from the conserved person or principal to support the requested disclosure; and

(3) Contains a finding required by law other than the provisions of sections 1 to 18, inclusive, of this act.

(f) A custodian and its officers, employees and agents are immune from liability for an act or omission done in good faith in compliance with the provisions of sections 1 to 18, inclusive, of this act.

Sec. 17. (NEW) (*Effective October 1, 2016*) In applying and construing this Connecticut Revised Uniform Fiduciary Access to Digital Assets Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact the Revised Uniform Fiduciary Access to Digital Assets Act.

Sec. 18. (NEW) (*Effective October 1, 2016*) Sections 1 to 17, inclusive,

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of this act modify, limit or supersede the Electronic Signatures in Global and National Commerce Act, 15 USC 7001 et seq., but do not modify, limit or supersede Section 101(c) of said act, 15 USC 7001(c) or authorize electronic delivery of any of the notices described in Section 103(b) of said act, 15 USC 7003(b).

Sec. 19. Section 45a-334a of the general statutes is repealed. (*Effective October 1, 2016*)

Approved June 9, 2016